

1 E. JEFFREY GRUBE (SB# 167324) jeffgrube@paulhastings.com
2 KERRI N. HARPER (SB# 217377) kerriharper@paulhastings.com
3 ANNA L. CHU (SB# 243378) annachu@paulhastings.com
4 PAUL, HASTINGS, JANOFSKY & WALKER LLP
5 55 Second Street
Twenty-Fourth Floor
San Francisco, CA 94105-3441
Telephone: (415) 856-7000
Facsimile: (415) 856-7100

6 Attorneys for Defendants
7 UNITED PARCEL SERVICE, INC.,
TONY AGENJO, and KIMBERLY MUNIZ

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APR - 8 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

JSW

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

12 MARK HARRIS,

13 Plaintiff,

14 VS.

15 UNITED PARCEL SERVICE, INC., an
16 Ohio Corporation; Tony Agenjo; Kimberly
Muniz; and DOES ONE through ONE
HUNDRED, inclusive,

Defendants.

Case No.

A row of four small, circular, textured objects, possibly beads or pieces of dried fruit, arranged horizontally.

[Alameda County Superior Court Case No.
RG07353967]

**DECLARATION OF KERRI N. HARPER
IN SUPPORT OF DEFENDANTS' NOTICE
OF REMOVAL**

1 I, Kerri N. Harper, declare and state as follows:

2 1. I am an attorney licensed by the Bar of the State of California, and I am
3 admitted to practice before this Court. I am an associate with the law firm of Paul, Hastings,
4 Janofsky & Walker, counsel of record for Defendants United Parcel Service, Inc. ("UPS"), Tony
5 Agenjo, and Kimberly Muniz, and I am one of the attorneys responsible for the defense of this
6 action. Except where otherwise noted, I have personal knowledge of the facts set forth in this
7 Declaration, and if called to testify under oath, could and would testify competently thereto.

8 2. On October 30, 2007, Plaintiff Mark Harris filed his Complaint entitled:
9 "*Mark Harris v. United Parcel Service, Co., Tony Agenjo, Kimberly Muniz, and Does 1-100,*
10 *inclusive,*" No. RG07353967, in the Superior Court of the State of California for the County of
11 Alameda. A true and correct copy of the Summons and Complaint is attached as Exhibit A. On
12 December 18, 2007, Plaintiff served UPS with a copy of his Complaint.

13 3. On January 15, 2008, Defendant UPS filed its Answer in the Superior
14 Court of the State of California for the County of Alameda. A true and correct copy of the
15 Answer is attached hereto as Exhibit B.

16 4. On January 16, 2008, UPS filed a Notice of Removal to Federal Court, and
17 gave notice of that removal to both the adverse parties and to the State Court pursuant to 28
18 U.S.C. § 1446(d). I also filed a Declaration in support of the Notice of Removal. A true and
19 correct copy of the January 16, 2008 Notice of Removal, Notice to State Court Clerk of Filing of
20 Notice of Removal of Action to Federal Court, Notice to Adverse Parties of Filing of Notice of
21 Removal of Action to Federal Court, and Declaration of Kerri N. Harper ISO Defendant's Notice
22 of Removal is attached hereto as Exhibit C.

23 5. DOES Defendants 1 through 50 are unnamed and unknown.

24 6. On February 6, 2008, Plaintiff served individual Defendants Kimberly
25 Muniz and Tony Agenjo with copies of the Summons and Complaint.

26 7. On February 11, 2008, Plaintiff and UPS stipulated and agreed to stay the
27 case pending a written decision by the California Supreme Court in the case of *Jones v. Lodge at*
28 *Torrey Pines*, No. S151022. A true and correct copy of the Stipulation and Order to Stay Case

1 and All Applicable Deadlines and Statutes Pending Further Order of the Court is attached hereto
2 as Exhibit D. On March 3, 2008, the California Supreme Court issued its written decision in
3 *Lodge at Torrey Pines* holding that non-employer individuals are not personally liable for
4 retaliation under the Fair Employment and Housing Act. *Lodge at Torrey Pines*, No. S151022,
5 2008 Cal. LEXIS 2504, *35 (Mar. 3, 2008)

6 8. On February 22, 2008, the District Court for the Northern District of
7 California remanded the case to the Superior Court of the State of California for the County of
8 Alameda. A true and correct copy of the Order of Remand is attached hereto as Exhibit E.

9 9. On March 5, 2008, Plaintiff filed a First Amended Complaint ("FAC") in
10 the Superior Court of the State of California for the County of Alameda. A true and correct copy
11 of Plaintiff's FAC is attached hereto as Exhibit F. On March 6, 2008, Plaintiff served Agenjo and
12 Muniz with a copy of the FAC. Plaintiff has not served the FAC on UPS.

13 10. On March 7, 2008, Defendants UPS, Agenjo, and Muniz jointly filed a
14 Case Management Statement in the Superior Court of the State of California for the County of
15 Alameda. A true and correct copy of the Case Management Statement for Defendants UPS,
16 Agenjo, and Muniz is attached hereto as Exhibit G.

17 11. On March 10, 2008, Plaintiff filed a Case Management Statement in the
18 Superior Court of the State of California for the County of Alameda. A true and correct copy of
19 the Case Management Statement for Plaintiff is attached hereto as Exhibit H.

20 12. On March 13, 2008, Plaintiff's counsel, Matt Oliveri, and Defendants'
21 counsel, Kerri N. Harper and Anna L. Chu, attended a case management conference in the
22 Superior Court of the State of California for the County of Alameda. On March 13, 2008, the
23 Superior Court of the State of California for the County of Alameda issued a Tentative Case
24 Management Order setting a further case management conference for July 10, 2008. A true and
25 correct copy of the Tentative Case Management Order is attached hereto as Exhibit I.

26 13. On April 3, 2008, Defendants UPS, Agenjo, and Muniz each filed an
27 Answer to Plaintiff's FAC in the Superior Court of the State of California for the County of
28 Alameda. A true and correct copy of the Answers is attached hereto as Exhibit J.

1 14. Plaintiff's Complaint, FAC, and Case Management Statement; UPS's
 2 Answer to the Complaint; UPS, Agenjo, and Muniz's Case Management Statement and Answers
 3 to the FAC; the Stipulation and Order to Stay Case and All Applicable Deadlines and Statutes
 4 Pending Further Order of the Court; the Order of Remand; and the Tentative Case Management
 5 Order are the only pleadings and documents on file in this matter:

6 15. Notice of this removal is being given to the adverse parties and to the State
 7 Court Pursuant to 28 U.S.C. § 1446(d). A true and correct copy of Defendants UPS, Agenjo, and
 8 Muniz's present Notice to State Court Clerk of Filing of Notice of Removal of Action to Federal
 9 Court is attached hereto as Exhibit K. A true and correct copy of Defendants UPS, Agenjo, and
 10 Muniz's present Notice to Adverse Parties of Filing of Notice of Removal of Action to Federal
 11 Court is attached hereto as Exhibit L. Proof of service of the present Notice to State Court Clerk
 12 of Filing of Notice of Removal of Action to Federal Court and the Notice to Adverse Parties of
 13 Filing of Notice of Removal of Action to Federal Court will be filed with this Court shortly after
 14 the Superior Court filing and service upon the adverse parties are accomplished.

15 16. Based on the allegations set forth in Plaintiff's Original Complaint and
 16 First Amended Complaint, I am informed and believe that the Plaintiff is, and was at the time this
 17 action was filed a citizen of California, within the meaning of 28 U.S.C. Section 1332(a). In
 18 addition, in Plaintiff's Department of Fair Employment and Housing ("DFEH") complaint, he
 19 lists his address as "820 Bridge Street, San Leandro, California 94577." The DFEH Complaint
 20 indicates that Plaintiff worked at UPS' Oakland location. A true and correct copy of Plaintiff's
 21 DFEH Complaint is attached hereto as Exhibit M.

22 17. I am informed and believe that UPS is and was, at the time this action was
 23 commenced, a citizen of the State of Ohio and the State of Georgia within the meaning of 28
 24 U.S.C. § 1332 (c)(1), because it is now, and was at the time this action was commenced,
 25 incorporated under the laws of the State of Ohio and now has and has had its principal place of
 26 business in the State of Georgia.

27 18. I am informed and believe that Agenjo and Muniz are now, and were at the
 28 time this action was commenced, citizens of the State of California within the meaning of 28

1 U.S.C. § 1332(a), because their places of residence and domicile are and were in the State of
2 California. Muniz and Agenjo are now, and were at the time this action commenced, UPS
3 employees. Muniz is the Division Manager of North California. Agenjo is a Division Manager
4 in Sunnyvale, California. The citizenship of Muniz and Agenjo is irrelevant as they appear to
5 have been added solely to defeat diversity, because no legally cognizable claim can be asserted
6 against them.

7 19. Plaintiff's FAC seeks an unspecified amount of general, special, and
8 punitive damages, and costs and attorneys' fees in connection with the causes of action set forth
9 in his Complaint. (FAC ¶¶ A-G.) In his original Complaint, however, he requests economic
10 damages for loss income, emotional distress damages, punitive damages, attorney's fees and
11 interests. (Compl. ¶¶ 42-45.) He also has alleged that he "suffered past and future wage loss and
12 loss of earning capacity in excess of \$1.5 million through his anticipated retirement age 67, loss
13 of additional job-related benefits in excess of \$500,000, and severe emotional distress." (Compl.
14 at 1, ln. 25-28.)

15 20. I am informed and believe that UPS is party to a collective bargaining
16 agreement with the International Brotherhood of Teamsters regarding UPS' employment of its
17 employees, including package drivers. A true and correct copy of the National Master United
18 Parcel Service Agreement, Article 1 "Parties to the Agreement" is attached hereto as Exhibit N.

19 I declare under penalty of perjury under the laws of the State of California and the
20 United States of America that the foregoing is true and correct.

21 Executed on April 3, 2008, in San Francisco, California.

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24 KERRI N. HARPER
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